APPEAL NO. 171238
FILED AUGUST 2, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 11, 2017, with the record closing on April 26, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 13%. The appellant (self-insured) appealed the hearing officer's determination, contending that the decision contains a clerical error, and that the hearing officer's decision is not supported by the evidence. The appeal file does not contain a response from the claimant to the self-insured's appeal.

DECISION

Reformed in part and reversed and rendered in part.

It is undisputed that the claimant sustained a compensable injury on (date of injury), and that the claimant reached maximum medical improvement (MMI) on June 14, 2016. The claimant did not attend the April 11, 2017, CCH. The hearing officer sent the claimant a 10-day letter; however, the claimant did not respond, and the hearing officer closed the record on April 26, 2017.

CLERICAL CORRECTIONS

At the CCH Self-Insured Exhibits A through F were admitted into evidence. However, the decision incorrectly states that Self-Insured Exhibits A through H were admitted. We reform the hearing officer's decision to reflect that Self-Insured Exhibits A through F were admitted to conform to the evidence admitted at the CCH.

The self-insured stipulated at the CCH, in part, that the compensable injury is at least a right index finger collateral ligament tear; the self-insured-selected required medical examination (RME) doctor, (Dr. K), certified that the claimant reached MMI on June 14, 2016, and assigned an 8% IR; and the date of statutory MMI is December 3, 2016.

However, the stipulations contained in Finding of Fact No. 1. D., F., and G. contain clerical errors. Specifically, Finding of Fact No. 1.D. omits "at least;" Finding of Fact No. 1.F. states that Dr. K assigned a 13% IR rather than 8%; and Finding of Fact No. 1.G. states the statutory date of MMI is December 13, 2016, rather than December 3, 2016. We reform the hearing officer's decision as follows to conform to the stipulations as stipulated to by the self-insured at the CCH:

1.D. On (date of injury), the claimant sustained a compensable injury in the form of at least a right index finger collateral ligament tear.

1.F. The self-insured-selected RME doctor, Dr. K, certified the claimant reached MMI on June 14, 2016, and assigned an 8% IR.

1.G. The statutory date of MMI is December 3, 2016.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in part, that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination. Rule 130.1(d)(1) states that a certification of MMI and assignment of an IR requires completion, signing and submission of the Report of Medical Evaluation (DWC-69) and a narrative report. Rule 130.12(c) provides, in part, that the certification on the DWC-69 is valid if there is an impairment determination of either no impairment or a percentage IR assigned.

(Dr. W), the designated doctor appointed by the Division, examined the claimant on June 14, 2016, and certified the claimant reached MMI on June 14, 2016. Using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), Dr. W assigned a 13% IR. The hearing officer correctly found that Dr. W's IR cannot be adopted because Dr. W rated an injury to the claimant's middle finger, which exceeds the scope of the compensable injury. An injury to the middle finger was neither stipulated to nor litigated at the CCH. Dr. W's certification cannot be adopted.

The other certifications in evidence are from Dr. K, the post-designated doctor RME doctor. Dr. K examined the claimant on December 19, 2016, and submitted alternate certifications. In both certifications Dr. K opined the claimant reached MMI on June 14, 2016. Using the AMA Guides, Dr. K assigned a 13% IR in one certification and an 8% IR in the other.

In an attached narrative report Dr. K stated that "for the accepted condition plus the thumb, the claimant's [IR] is 13%. . . ." Dr. K assigned 8% impairment for the right index finger collateral ligament tear pursuant to the AMA Guides for loss of range of motion (ROM) and sensory loss, and also included 8% hand impairment for loss of ROM of the claimant's thumb for a combined IR of 13%. As noted above, the self-insured stipulated that the compensable injury was in the form of at least a right index finger collateral ligament tear. An injury to the thumb was neither stipulated to nor litigated at the CCH. Dr. K's 13% IR considers and rates a condition not determined to be compensable, and as such it cannot be adopted. Because both certifications assigning a 13% IR consider and rate conditions not determined to be compensable, we reverse the hearing officer's determination that the claimant's IR is 13%.

The remaining certification in evidence is Dr. K's certification assigning an 8% IR. Dr. K stated in the attached narrative report that "for the injury sustained to the right index finger, the [claimant] would have an 8% total whole person [IR]." Dr. K made clear that the 8% whole person impairment was based on the compensable right index finger collateral ligament tear. Dr. K's 8% IR was assigned in accordance with the AMA Guides. Accordingly, we render a new decision that the claimant's IR is 8%.

SUMMARY

We reform the hearing officer's decision to reflect that Self-Insured Exhibits A through F were admitted to conform to the evidence admitted at the CCH.

We reform the hearing officer's decision as follows to conform to the stipulations as stipulated to by the self-insured at the CCH:

> 1.D. On (date of injury), the claimant sustained a compensable injury in the form of at least a right index finger collateral ligament tear.
>
> 1.F. The self-insured-selected RME doctor, Dr. K, certified the claimant reached MMI on June 14, 2016, and assigned an 8% IR.
>
> 1.G. The statutory date of MMI is December 3, 2016.

We reverse the hearing officer's determination that the claimant's IR is 13%, and we render a new decision that the claimant's IR is 8%.

The true corporate name of the insurance carrier is **HARRIS COUNTY (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

ED EMMETT, COUNTY JUDGE
1001 PRESTON, SUITE 911
HOUSTON, TEXAS 77002.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge